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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

FRANKIE HOOVER,

)

Petitioner,

)

v.

)

UNITED STATES OF AMERICA,

)

Respondent.

)

Crim. Case No. 5:16-cr-58

Civil Case No. 5:19-cv-52

ORDER ON REPORT AND RECOMMENDATION

(Doc. 69)

(Doc. 20)

The Report and Recommendation of the United States Magistrate Judge was filed January 3, 2020. After careful review of the file and the Magistrate Judge's Report and Recommendation, no objections having been filed by any party, this court ADOPTS the recommendations in full for the reasons stated in the Report.

BACKGROUND

Petitioner was originally charged and convicted in this court in Docket No. 5:16-cr-58 ("Hoover One.") In October 2017, he was sentenced to a term of 70 months and placed at Allenwood, Pennsylvania.

On April 11, 2019, petitioner filed *Hoover v. United States* in the Middle District of Pennsylvania. ("Hoover Two"). This case was originally docketed in Pennsylvania as Case No. 1:19-cv-629. In an effort to avoid the one-year statute of limitations, it was filed pursuant to 28 U.S.C. § 2241. The Middle District of Pennsylvania treated it as filed pursuant to 28 U.S.C. § 2255 because it challenged the legal basis for petitioner's sentence and transferred the case to the District of Vermont where it received Docket No. 5:19-cv-52.

The Government moved to dismiss Hoover Two on grounds that § 2241 did not apply to an attack on the sentence and that a § 2255 petition would be time-barred. On October 15, 2019, the Magistrate Judge permitted petitioner to amend the petition. (Doc. 19).

On November 5, 2019, Petitioner filed a separate 2255 proceeding in the District of Vermont in Docket No. 5:16-cr-58 (Doc. 63) (Hoover One). The court accepted the filing as an amendment which restated the post-conviction claims addressed in both Hoover One and Two. In his Report and Recommendation filed in both cases, the Magistrate Judge recommends dismissal of both petitions on grounds of time-bar.

DISCUSSION

A district judge must make a de novo determination of those portions of a magistrate judge’s report and recommendation to which an objection is made. *See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); see also United States v. Simard*, No. 2:10-CR-47, 2019 WL 5704226, at *1 (D. Vt. Nov. 5, 2019). The district judge “may accept, reject, or modify, in whole or in part,” the magistrate judge’s proposed findings and recommendation. 28 U.S.C. § 636(b)(1).

Petitioner appears before the court as a self-represented litigant. Petitioner, thus, is “entitled to a liberal construction of [his] pleadings, which should be read to raise the strongest arguments that they suggest. *Diaz v. United States*, 633 F. App’x 551, 555 (2d Cir. 2015) (internal quotation marks omitted).

The court accepts and adopts the Magistrate Judge’s recommendation. Habeas motions filed pursuant to § 2255 are subject to a one-year limitations period. 28 U.S.C. § 2255(f). Here, the sentence was imposed in October 2017. Petitioner did not take a direct appeal. There are no bases advanced for equitable tolling. Therefore, the one-year statute of limitations ran in

October 2018 – five months prior to the filing of Hoover Two. The case is dismissed without prejudice on grounds of time-bar.

CONCLUSION

The District Court ACCEPTS and ADOPTS the Report and Recommendation (Doc. 69) (Doc. 20). Pursuant to Federal Rule of Appellate Procedure 22(b), a certificate of appealability is DENIED because the petitioner has failed to make a substantial showing of denial of a federal right. Furthermore, the petitioner's ground for relief do no present issues which are debatable among jurists of reason, which could have been resolved differently, or which deserve further proceedings. Furthermore, it is certified that any appeal of this Order would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

THESE CASES ARE CLOSED.

Dated at Rutland, in the District of Vermont, this 29th day of January, 2020.



Geoffrey W. Crawford, Chief Judge
United States District Court

JUDGMENT ENTERED ON THE DOCKET

DATE: 1/29/2020